

R E M A R K S

Claims 1-18 remain in the application.

Reconsideration of this application is respectfully requested.

Corrections to the drawings, shown in "red," are enclosed for approval by the Examiner.

It is respectfully requested that the submission of corrected formal drawings be delayed until such time as the application is deemed to be in condition for allowance.

Objection to the Drawings:

1. Objection under 37CFR 1.84(p)(5)

A proposed drawing correction has been submitted adding designator 318 to FIG. 3. The objection is believed to be overcome.

2. Objection under 37 CFR 1.83(a)

A proposed drawing change has been submitted adding designators 310, 318, 502, 504 and 506 to FIG. 5 to more clearly indicate the gradual space change between the first section 318 of the housing and the self-retaining element 316. No new matter has been added. Support for these drawing changes is found in claim 18 and the specification on page 7, lines 3-12 (as amended). As seen in updated FIG. 5, the space between the first section 318 of the housing and the self-retaining element 316 becomes gradually smaller 502, 504, and 506 as the self-retaining element 316 extends further away from the sound delivery tube 310 (now shown as cross-hatched). Accordingly, the objection is believed to be overcome.

Claim Rejections - 35 U.S.C. § 102(b):

Claims 1-5, 7, 11, 13 and 15-18 are rejected under 35 U.S.C. § 102(b) as being anticipated by Strzalkowski (3,035,127).

Claims 1, 6-7, 10-13 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Stevens (4,864,610).

Applicants respectfully traverse the rejections.

The Strzalkowski reference fails to teach or suggest any self retaining mechanism.

Strzalkowski teaches in FIG. 25, feature 359 as an ear canal insert and makes no reference or claim to this feature providing any self retention properties. The ear canal insert of Strzalkowski is molded to the individual's ear concha bowl for the purpose of filling the entire concha bowl cavity. Applicant teaches and claims in independent claim 1, "...the self-retaining element rests beneath inferior crus of the ear...". Applicant's use of the inferior crus is the only area of contact with the ear that provides self-retention. Additionally, Strzalkowski only refers to "... a secure mounting upon the wearer's outer ear..." in column 6, lines 8-15 based on a skull temple fitting achieved through a procedure he refers to as an "auricolostomy". Skull temple fitting requires mating to a complex curved surface as the sulcus (groove behind the ear) intersects the mastoid process of the skull. The term "auricolostomy" as defined only by Strzalkowski is not a term well known in the surgical arts and apparently requires an incision to be made through the lower sulcus through which to pass an acoustic tube. Applicant's invention does not require a skull temple mating and does not require a surgical procedure to the human body and thus is far less invasive than Strzalkowski. Accordingly, the rejection under 102(b) is believed to be overcome.

The Stevens reference fails to teach self-retention. The Stevens reference teaches and claims in claim 1 using "a conically shaped ear cushion (23) formed of compressible foam" to secure the sound tip (22) of the sound tube (20) in the user's ear. This foam cushion operates as a plug that can be easily be dislodged. Also, as noted in col. 4, lines 5-7 of Stevens, in the commercial product a few different size cushions are offered because the size of the concha varies from person to person. Applicant's invention has no such requirement as supported in the Specification on page 3, lines 18-21 where "[t]he form factor... provides universal comfort and fit for ears of different shapes and sizes, across a major portion of the population." Accordingly, the rejection under 102(b) is believed to be overcome.

Claim Rejections - 35 U.S.C. § 103:

Claims 8-9 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Strzalkowski or Stevens.

Claims 8, 9, and 14 are all dependent claims providing further limitations to what is believed to be an allowable claim 1 and hence are also in condition for allowance.

Accordingly, this application is believed to be in proper form for allowance and an early notice of allowance is respectfully requested.

Please charge any fees associated herewith, including extension of time fees, to 50-2117.

Respectfully submitted,

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